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NUV 16 2004

Milliken & Company  
920 Milliken Road  
Spartanburg, SC 29304

**Fax**

<b>To:</b>	Examiner Cheryl Ann Juska Group Art Unit 1771	<b>From:</b>	Daniel R. Alexander Reg. No. 32,604
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<b>Subject:</b>	Application Serial No. 09/721,871 Filed: November 24, 2000 For: Cushioned Carpet, Carpet Tile, and Method Inventor(s): Higgins et al. Attorney Docket: 5113	<b>Date:</b>	November 16, 2004
<b>Copies:</b>		<b>Pages:</b>	7 including cover

**Comments:**

**Supplemental Declaration with attachment (6 pages)**

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Case #5113

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Application of: Higgins et al.

Serial Number: 09/721,871

Filed: November 24, 2000

For: **CUSHIONED CARPET, CARPET TILE, AND METHOD**

Group Art Unit: 1771

Examiner: Juska, Cheryl Ann

**SUPPLEMENTAL DECLARATION**

Honorable Commissioner for Patents

P. O. Box 1450

Alexandria, VA 22313-1450

Sir:

Further to the interview with the Examiner on September 15, 2004, the RCE with Amendment filed July 23, 2004 and the Supplemental Amendment filed September 16, 2004, Applicants respectfully submit herewith a second or supplemental declaration of Richard L. Kilpatrick.

Rebond foam pads for broadloom carpet were known. Such rebond foam pad typically had large chip sizes, low density, non-uniform density, was frangible, fragile, and relatively thick. Also, such rebond foam pads were not used in preformed carpet tiles prior to the invention described in the present application.

In addressing an earlier rejection, Applicants submitted a first declaration (on December 11, 2003) of Richard L. Kilpatrick who holds the position of Director of Development for the company which developed and manufactured the product set forth in the Higgins '857 reference. This entity Milliken & Company also owns the present application. Applicants also submit herewith a second or supplemental declaration of Richard L. Kilpatrick. A copy of this supplemental declaration is appended for incorporation into the present record.

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As described in the declarations, it would not have been obvious for one of ordinary skill in the carpet tile art to use rebond foam in a cushion back carpet tile.

Milliken & Company has two rebond foam cushion back carpet tile products on the market today, the Legato™ carpet system and the Tesserae™ carpet system. The Legato carpet tiles have a special interlocking wave shape while the Tesserae carpet tiles are square. At present, at least Milliken's Legato™ carpet system (sold in Home Depot stores) is enjoying commercial success.

It was surprising and unexpected that a polyurethane rebond foam would work in a cushion back carpet tile, much less a carpet tile rated for commercial use. It took many years for Milliken to develop a performing carpet tile which has a similar look and feel as residential broadloom.

Cushion back carpet tile samples having the same construction as Milliken Comfort Plus® cushion back carpet tiles with the exception of rebond foam (flame laminated to fiberglass and felt) rather than filled polyurethane foam (in-situ laminated to the fiberglass and felt) (same face construction, same layer construction) were tested and surprisingly and unexpectedly found to have performance characteristics at least on par with filled polyurethane cushion back carpet tiles and to be rated for commercial use. Such structures are shown, for example, in Figures 15A, 15B, and 19A and 19B of the drawings of the present application and in Figures 3A and 3B of the Higgins '276, '500, and '881 patents.

As one of skill in the art, Mr. Kilpatrick has concluded that contrary to the position taken by the Patent Office, one of skill in the art would not have been motivated to substitute the foam layer in the tile disclosed in Higgins '857 with the rebond foam materials from De Simone '207.

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**CONCLUSION:**

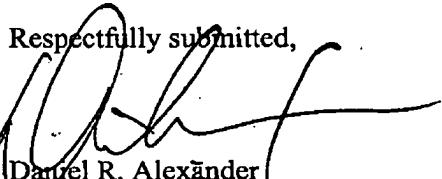
On the grounds as set forth above, Applicants respectfully request that all remaining claims be passed to issue. While an attempt has been made to address all outstanding issues, to any extent that one or more issues remain, the undersigned respectfully requests a telephone conference to resolve such issues.

**EXTENSION OF TIME / FEE AUTHORIZATION:**

While this submission is believed to be timely, to any extent required a petition for an extension of time is hereby made.

Please charge any fees or credit any overpayment in connection with this submission (including any extension of time fee) to Deposit Account 04-0500.

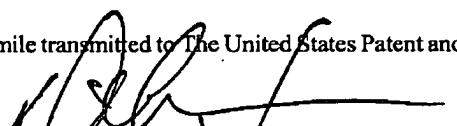
Respectfully submitted,

  
Daniel R. Alexander  
Attorney for Applicant(s)  
Registration Number 32,604  
Telephone: (864) 503-1372

November 16, 2004

**CERTIFICATE OF TRANSMISSION**

I hereby certify that this correspondence is being facsimile transmitted to The United States Patent and Trademark Office at 703-872-9306 on November 16, 2004.

  
Daniel R. Alexander  
Attorney for Applicant(s)

Supplemental Declaration of Richard L. Kilpatrick

1. I, Richard L. Kilpatrick, declare as follows:
2. I am the same Richard L. Kilpatrick as that of the earlier Declaration of Richard L. Kilpatrick dated December 9, 2003.
3. Based on my experience, prior to the rebond foam carpet tile invention of Milliken & Company, a person of ordinary skill in the carpet tile art would not have been motivated to substitute a rebond foam (such as a typical rebond foam pad used under broadloom carpet) for the filled, virgin polyurethane foam of Milliken's Comfort Plus® cushion back carpet tile (described, for example, in the Higgins '881, '500, and '276 patents).
4. Polyurethane cushion back carpet tile, such as Milliken's Comfort Plus cushion back carpet tiles (described, for example, in the Higgins '881, '500, and '276 patents) are highly engineered, dimensionally stable, durable products.
5. Carpet tiles must be dimensionally stable to be installed as carpet tile and to withstand the rigors of use.
6. Carpet tiles are subjected in use to point loads (high heels, table legs), dynamic loads (shoe heels), walking traffic, rolling traffic, scuffing, chair casters, and the like.
7. Carpet tiles must not only be dimensionally stable, but also durable.
8. Milliken & Company puts its carpet tiles through a myriad of tests to ensure that they are suited for use as commercial carpet tile (rated for heavy commercial use).
9. Milliken & Company uses a number of carpet tile tests including caster chair, Gmax, hexapod, ball bounce, delamination, and chamber flatness.
10. Over the years, there have been many failed attempts to make commercially viable cushion back carpet tile.
11. Milliken & Company developed a first polyurethane cushion back carpet tile in about 1984 (subject of Higgins '857 patent). Milliken & Company began marketing an improved polyurethane cushion back carpet tile in about 1994 (subject of Higgins '881, '500, and '276 patents). Milliken & Company did not develop a polyurethane rebond foam cushion back carpet tile until about 2000 (16 years after its first polyurethane cushion back tile).

12. The carpet tile industry is afraid of tile failure, such as latent defects, because such failures are expensive to remedy.
13. Typical rebond foam broadloom carpet underlay or pad has been around for years.
14. Attached cushion broadloom (virgin foam on the back of broadloom carpet) has also been around for years.
15. Carpet tiles are more than just broadloom carpet cut into squares.
16. Prior to Milliken & Company making carpet tiles using polyurethane rebond foam, I am not aware of any other carpet tiles made with rebond foam.
17. Rebond foam pad was considered as a substandard material of inadequate consistency and durability for use in carpet tile.
18. Rebond foam pad worked as pad under broadloom carpet (but was not perceived to be of sufficient consistency, durability, strength, thickness, uniformity, and the like to serve as cushion in a carpet tile).
19. Milliken & Company has been the leader in polyurethane cushion back carpet tile since at least about 1988 and continued to consider filled, virgin polyurethane foam as the foam of choice for carpet tile until about 2000.
20. It would not have been obvious to one of ordinary skill in the carpet tile art to use rebond foam rather than virgin polyurethane foam in a preformed carpet tile.
21. It was surprising and unexpected that rebond foam would work as well as virgin polyurethane foam in a carpet tile.
22. It was unbelievable to me and others that a rebond foam would make a commercially viable, cushion back carpet tile that performed.
23. Hence, it would not have been obvious for one of ordinary skill in the carpet tile art to modify the Higgins '857 carpet tile structure to incorporate the rebond foam disclosed in the De Simone '207 patent.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, and that such willful false statements may jeopardize the validity of the current application or any patent issued thereon.

Respectfully submitted,

Sept. 22, 2004  
Date

Richard L. Kilpatrick  
Richard L. Kilpatrick

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